

## TIME-ADOT

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### **Napolitano, ADOT and TIME: Three's a crowd?**

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What role, if any, government should have in the ballot initiative process is stirring up a controversy over the state's ambitious transportation plan.

The Arizona Department of Transportation in late May announced that \$42.6 billion in state transportation upgrades would be paid for by the TIME initiative's proposed one-cent sales tax increase. That left friends, foes and neutral observers of the initiative differing on whether the executive branch had overstepped its authority.

Gov. Janet Napolitano, a key TIME supporter whose office helped draft the initiative, on June 4 defended the use of ADOT's Statewide Strategic Investment Strategy by the TIME committee.

ADOT is not campaigning for the initiative, she said, and it should come as no surprise a citizens' ballot committee would consult with state transportation experts when creating a transportation initiative.

"I think what you have is an agency providing expertise, but they are not conducting the campaign or leading the campaign at all," she said.

Likewise, ADOT Director Victor Mendez told the Arizona Capitol Times that ADOT is not urging voters to support the initiative and that the TIME coalition used a document available to the public.

"At the very essence, it is a citizens' initiative," said Mendez, moments before a State Transportation Board hearing in Flagstaff. "You and I could take the same information and run our own ballot initiative."

The TIME initiative committee, led by several business representatives and the Arizona chapter of the Associated General Contractors, recently hired Democrat election law attorney Chuck Blanchard to represent their effort.

Blanchard refuted assumptions by public policy groups and GOP state lawmakers that the cooperation between ADOT and TIME was a possible misuse of public resources. The executive branch's use of the ballot is as legitimate as an elected legislator's use of staff to propel a referendum, he said.

"The Legislature does it all the time," Blanchard said. "(It has) legislation vetoed by the governor; (it doesn't) like it. (It uses) government resources to draft a referendum. (It uses) government resources to put it on the ballot."

Clint Bolick, the Goldwater Institute's chief litigator, characterized the government-business nexus as an "unholy alliance" that bypasses the Legislature.

"This is the hybridization of governmental decision making and the citizens' initiative process," Bolick said. "The government is outsourcing to a consortium of special interests."

Senate Transportation Committee Chairman Ron Gould, R-3, reacted sharply to last month's ADOT announcement, which also noted that the department would engage in public meetings to discuss the Statewide Transportation Investment Strategy.

Gould, a senator from Lake Havasu and an outspoken critic of Napolitano, delivered a June 2 floor speech declaring that ADOT's role was a clear violation of the law, or at least, the law's spirit.

"This needs to be investigated, and it needs to be stopped," he said.

Later, Gould said the governor's leading role in putting the TIME initiative on the ballot was an unlawful extension of executive authority and a misuse of the ballot initiative process.

"The citizens' initiative process is to get around government. It's for the citizens to use when the government won't respond," he said. "It's not for the governor when she can't get a plan through the Legislature."

Paul Bender, a constitutional law professor at Arizona State University's Sandra Day O'Connor College of Law said governors or government agencies generally are expected to go the Legislature to achieve a desired policy, but that an agency might be entitled to support a ballot initiative as long as its employees avoid taking an active role in its promotion.

Bender supported the contention that a citizens' group is entitled to use a public-policy agenda created with government resources, but differed whether a government employee such as a governor's staffer could help draft a citizens' ballot initiative.

"If somebody in the Governor's Office sat down and drafted the initiative and handed it to a bunch of citizens and said, 'hey, you're going to like this, so why don't you get a committee together to get this on the ballot;' I think that is crossing the line and they are not supposed to do that," he said.

Leezie Kim, chief counsel for the governor's office, said she started to help write the TIME initiative in March.

Napolitano spokeswoman Jeanine L'Ecuyer said any criticism resulting from Kim's work to help draft the initiative was unfounded and a "red herring."

Attorney Paul Eckstein, who has a private practice in Phoenix, said having an attorney for the governor serve as a drafter for an initiative is proper because at that stage a campaign does not exist, adding a 'bright line' between acceptable actions is formed later.

"There is no campaign until a committee is formed and an initiative has been filed with the Secretary of State's Office," he said.

The Attorney General's Office refused to comment.